IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10802 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VINODBHAI MANHARBHAI PRAJAPATI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. P.K.Shukla AGP for Respondent No. 1,2 and 3

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/12/2000

ORAL JUDGEMENT

#. The petitioner herein by way of this petition under Article 226 of the Constitution of India has challenged his order of detention passed by the District Magistrate, Bhavnagar on 8.8.2000 in exercise of the powers conferred upon him under section 3(1) of he Gujarat Prevention of

Anti social Activities Act 1985 (PASA Act for short). The detenu came to be detained from 8.8.2000 in pursuance to the above said order.

#. The detaining authority took into consideration the investigation of 4 criminal cases registered against him under section 379 of I.P.C. before the A Division Police Station, Bhavnagar. The detaining authority also considered the statement of all the 3 witnesses who on assurance of identity offered the statements against the petitioner that the petitioner was indulging in the activity of theft and on opposing the concerned witness was beaten by the petitioner. From the above material the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mrs. Subhadharaben Patel for the petitioner and Mr. P.K.Shukla learned AGP for the respondents were heard.

#. The main contention which was vehemently urged before this court against the order of detention was regarding the claim of privilege by the detaining authority under section 9(2) of the PASA Act to keep the names of the witnesses secret.

#. The established law is that the detaining authority before claiming privilege under section 9(2) of the PASA Act must reach to subjective satisfaction as to the genuineness of the statements of the witnesses concerned. There must be some material available from which the detaining authority might have reached to that subjective satisfaction. In the ground of detention, the detaining authority observed that the witnesses were called in person by the detaining authority and he has personally verified the contents and the say of the witnesses carefully and scrupulously and from that the detaining authority came to the conclusion that the names and addresses of the witnesses were required to be kept secret because of fear and apprehension expressed by the witnesses were genuine according to the detaining authority. When we turn to the statements it clearly appears that the statements are recorded by the PI, A Division Police Station, Bhavnagar. The statements were verified by the Sub-Divisional Police Officer. Below the statement the detaining authority only put an endorsement "verified the contents" and signed. There is nothing on record to show that the detaining authority called the witnesses personally and verified the fear and apprehension expressed by the witnesses himself.

Therefore, the claim of privilege under section 9(2) of the PASA Act is not genuine. In Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. reported in 1996(1) GLH 300 this court observed that there must be some material before the detaining authority to come to subjective satisfaction of fear or apprehension expressed by the witnesses were correct. This court placed reliance on the case of Koli Ashwin vs. State of Gujarat in Special Cri.Application No.. 1812 of 1993 wherein the Division Bench of this Court has made the following observations:

"However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy. S.P. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material."

In this case also the detaining authority in fact has not verified the act that the witnesses expressed fear or apprehension about the petitioner. At least there is no material available on record to denote that from which material the authority reached the subjective satisfaction as to claim privilege under section 9(2) of the PASA Act. Therefore, the right of the detenu-petitioner to make effective representation to that extent is jeopardised so as to render the further detention of the petitioner vitiated . The order of detention, hence is required to be quashed and set aside.

#. In view of the above discussion the detention order passed by the District Magistrate, Bhavnagar on 8.8.2000 against the petitioner under PASA Act is hereby quashed and set aside. The petitioner- Vinodbbhai Manharbhai Prajapati is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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